

**Continental Hagen Corp. and Building Material and  
Dump Truck Drivers Local Union 420, Interna-  
tional Brotherhood of Teamsters, AFL-CIO.<sup>1</sup>  
Case 31-CA-17605**

March 27, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On August 31, 1989, the National Labor Relations Board issued a Decision and Order,<sup>2</sup> *inter alia*, ordering Respondent, Continental Hagen Corp., to pay backpay to its employees. On June 7, 1991, the United States Court of Appeals for the Ninth Circuit enforced the Board's Order in full.

A controversy having arisen over the amount of backpay due the discriminatees, on July 31, 1991, the Acting Regional Director for Region 31 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated October 8, 1991, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by October 23, 1991, summary judgment would be sought. On October 22, 1991, counsel for Respondent informed the acting regional attorney by telephone that Respondent did not plan to file any response to the specification. The Respondent filed no answer. Again, by letter dated December 23, 1991, counsel for the General Counsel advised the Trustee in Bankruptcy of the Respondent that no answer had been filed and that the General Counsel would move for summary judgment if no answer was received by January 6, 1992.

On December 24, 1991, the Trustee in Bankruptcy responded stating that while the automatic stay provisions of the Federal Bankruptcy Code precluded any action against the estate without approval of the court, the Trustee was willing to accommodate the counsel for the General Counsel and suggested that she prepare a "stipulation for relief from [the] automatic stay." On January 3, 1992, counsel for the General Counsel responded to the Trustee's letter, advising him that a Board proceeding is exempted from the automatic stay

and restating the need for the Respondent to file an answer. No answer was filed.

On February 25, 1992, counsel for the General Counsel filed with the Board a Motion to Transfer the Case to and Continue Back Pay Proceedings Before the Board and for Summary Judgment, with exhibits attached. On February 27, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The Respondent's asserted defense, based on its filing of a bankruptcy petition, is without merit. It is well-established that Board proceedings fall within the exception to the automatic stay provision of the Federal Bankruptcy Code for proceedings by a governmental unit to enforce its police or regulatory powers. It is equally well-established that the filing of a bankruptcy petition does not deprive the Board of its jurisdiction to resolve unfair labor practices. See, e.g., *Cardinal Services*, 295 NLRB No. 96 fn. 2 (June 30, 1989), and cases cited there.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specifi-

<sup>1</sup> The name of the Charging Party has been changed to reflect the new official name of the International Union.

<sup>2</sup> 296 NLRB No. 55.

cation and we will order payment by the Respondent to the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondent, Continental Hagen Corp., Burbank, California, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their

names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

William J. Gross	\$1,672.50
Jose Guarderas	1,460.80
Alex Samarin	1,672.50
Danny Slate	1,660.00